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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11 RICHARD A. MAIZE, ) Case No. CV 12-05398 DDP ✓  
12 Plaintiff, ) (CR 07-00455 DDP)  
13 v. ) ORDER GRANTING GOVERNMENT'S  
14 UNITED STATES OF AMERICA, ) MOTION TO DISMISS 28 U.S.C. §  
15 Defendant. ) 2255 MOTION WITHOUT PREJUDICE  
 ) [Docket Nos. 7 (CV), 197 (CR);  
 ) re: Nos. 1 (CV), 192 (CV)]  
 )

17 Presently before the court is the Government's Motion to  
18 Dismiss Without Prejudice, While Direct Appeal is Pending, Maize's  
19 Motion to Vacate Judgment and Pleas of Guilty Pursuant to 28 U.S.C.  
20 § 2255 ("Motion"). Having read the parties' moving papers, the  
21 court grants the Government's Motion and adopts the following  
22 Order.

23 The parties correctly note the applicable law. District  
24 courts typically "should not entertain a habeas corpus petition  
25 while there is an appeal pending." Feldman v. Henman, 815 F.2d  
26 1318, 1320 (9th Cir. 1987). This "general rule of forbearance is  
27 not, however, a jurisdictional impediment." United States v.  
28 Taylor, 648 F.2d 565, 572 (9th Cir. 1981). A district court "may

1 entertain a collateral motion during the pendency of a direct  
2 appeal if 'extraordinary circumstances' outweigh the considerations  
3 of administrative convenience and judicial economy." Id.

4 According to Maize, the extraordinary circumstance here is  
5 that his Motion to Vacate Judgment and Pleas of Guilty Pursuant to  
6 28 U.S.C. § 2255 ("§ 2255 Motion") is based on the same factual  
7 predicates as his direct appeal, such that if this court grants his  
8 § 2255 Motion it will moot the appeal. The court finds that this  
9 circumstance does not justify diverging from the general rule. As  
10 the Government notes, the parties have already completed briefing  
11 on Maize's appeal, and the appeal has been assigned to a merits  
12 panel. Further mitigating any concerns here, the court notes that  
13 Maize has been released on bond pending appeal.

14 For all of these reasons, the court GRANTS the Government's  
15 Motion and dismisses Maize's § 2255 Motion without prejudice to his  
16 refiling after the conclusion of his direct appeal.

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19 IT IS SO ORDERED.

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22 Dated: August 6, 2012

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DEAN D. PREGERSON  
United States District Judge